

ABSTRACTS

How to judge the conflict between the law and the regulation to be illegal — in the case of the Kanagawa Prefecture Regulation about the extraordinary corporate tax —

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Concerning how to judge the conflict between the law and the regulation to be illegal, the Supreme Court decided in the case of Tokushima City Public Security Regulation that the illegality of the regulation depends on whether the law itself admits the provision of different rules in the regulation. That is, judgments whether the regulation infringes the law should be based not only on the text of the law and the regulation, but also on the purpose and the meaning of the law and the regulation.

There is indeed conflict between the provision of corporate enterprise tax in the Local Tax Act, which admits the deduction of deficit from total income, and the provision of the extraordinary corporate tax in the Kanagawa Prefecture Regulation, which impose tax on deducted deficit. However, in order to decide whether there is a real conflict between them, we must consider the purpose and the meaning of the law and the regulation substantially. And since each local government has its own power of taxation, the Local Tax Act must be so interpreted that it allows the Kanagawa Regulation to impose tax on the deducted deficit of total income as well.